

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Third Periodic Review of the)	MB Docket No. 07-91
Commission's Rules and Policies)	
Affecting the Conversion)	
To Digital Television)	

To: Secretary, FCC

COMMENTS

St. Louis Regional Educational and Public Television Commission ("St. Louis Public Television" or "SLPTV"), by its attorneys, provides these comments in response to the *Notice of Proposed Rulemaking* in the referenced docket, FCC 07-70 (released May 18, 2007) ("*NPRM*").

SLPTV applauds the FCC's determination to have a strong DTV system in place across the country on the February 17, 2009 digital transition deadline, and it fully supports that goal. However, SLPTV strongly urges the FCC to exercise its discretion under the law establishing the transition deadline to provide substantially more flexibility to stations regarding the process and timing of their achieving their "ultimate" or "final" DTV transmission facilities.

Specifically, with respect to KETC-DT, SLPTV urges the FCC to permit it to continue to operate its currently constructed and licensed DTV facilities through the end of transition and beyond, until such time as SLPTV is able ultimately to build out larger DTV facilities, notwithstanding that the current facilities are smaller

than the DTV Table of Allotment facilities specified for KETC-DT, and that KETC-DT covers 97.2% of KETC (TV) analog coverage, instead of 100%.

BACKGROUND

SLPTV is a non-profit 501(c)(3) organization and the licensee of noncommercial educational station KETC (TV), Channel *9, and KETC-DT, Channel *39, in St. Louis, Missouri. SLPTV is the PBS member station in St. Louis, broadcasting a wide variety of high-quality news, public affairs, informational, educational and entertainment programming, including children's programming, to the St. Louis metropolitan area.

SLPTV was allotted Channel *39 as its pre-transition digital channel, and KETC-DT is currently licensed and operating on Channel *39 with an antenna side-mounted on the KETC (TV) tower with ERP of 124.6 kW at 278.6 m HAAT. *See* FCC File BLEDT-20020816AAQ, granted February 12, 2003. These facilities provide coverage to 97.2% of the KETC analog service population.

It was always SLPTV's intention ultimately to return to its analog Channel *9 as its permanent digital channel. On that basis, SLPTV certified in November of 2004 that it would "replicate" its analog coverage area. *See* FCC File No. BCERET-20041101AEJ. It then sought the allocation of DTV Channel *9 in the January, 2005 First Round of the FCC's digital channel election process. *See* FCC File No. BFREET-20050105AAG. That meant, among other things, that SLPTV expected

that KETC-DT would be subject to an 80% replication requirement at the July 1, 2006 deadline.

However, SLPTV's election of its NTSC Channel *9 was disapproved by the Commission in June, 2005 due to small amounts of interference to Station WSIU-DT in Carbondale, Illinois. As a result, during June and July of 2005, SLPTV sought to reach an agreement with Station WSIU-DT to allow for KETC-DT's use of Channel *9. After those efforts failed, SLPTV had no choice in its First Round Conflict Decision in August, 2005 but to modify its channel election to select its existing DTV Channel *39. *See* FCC File No. BFRECT-20050811AAL. The FCC released its tentative designation of post-transition DTV Channel *39 for KETC-DT on October 5, 2005. The Table of DTV Allotments, Appendix B of the *Seventh Further Notice of Proposed Rulemaking* in MB Docket 87-268, FCC 06-150 (released October 20, 2006) specified facilities for KETC-DT on Channel *39 of 991 kW at 326 m HAAT. These facilities were carried over to the Final DTV Table, just released.

By virtue of this unintended and unhappy result, because it had already constructed its intended pre-transition facilities, and because it was unable to satisfy the 100% replication requirement in any event, SLPTV on June 28, 2006 filed a request for waiver of the replication deadline, a copy of which is attached. That waiver was granted by the FCC's *Order* on DTV Build-Out, FCC 07-90, released May 18, 2007, but, for reasons which SLPTV is unable to fathom given the circumstances, only for a period of six months.

COMMENTS

I. The FCC should be flexible in the process for and timing of construction of final DTV facilities.

SLPTV strongly urges the FCC to exercise its discretion under the law establishing the February 17, 2009 digital transition deadline by providing substantial flexibility to stations regarding the process for and timing of their achieving their “ultimate” or “final” DTV transmission facilities, so long as facilities of some sort are constructed on permanent DTV channels by February 17, 2009. There should be no requirement to achieve replication or maximized facilities (or such other facilities specified in the proposed DTV Table of Allotments) by any particular deadline, such as February 17, 2009, and certainly not earlier.

Clearly, the FCC has discretion to show such flexibility with respect to stations achieving their final replicating or maximized DTV facilities. The Digital Television and Public Safety Act of 2005, Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006), established February 17, 2009 as the deadline for the end of analog transmissions by all full power stations, and for the end of analog and digital transmissions on all out-of-core channels, but there is no requirement in the law, or even a suggestion, that the deadline needs to become a deadline as well for final DTV facilities.

SLPTV urges that the FCC should take advantage of the flexibility in the law, by similarly according flexibility to stations to achieve their final DTV facilities at the time and in the manner that they are best able to do so, subject to the minimal requirement that all DTV stations be operating on their permanent DTV channels by the transition deadline (unless construction extensions are authorized

by particular circumstances). The process and timing contemplated by the FCC in the *NPRM* will create enormous difficulties for literally hundreds of stations across the country, who will virtually simultaneously have to take down analog or interim DTV stations, to install equipment for their DTV stations (to get their DTV stations operating on their new permanent DTV channels in the case of over 600 stations whose permanent DTV channels are not the same as their interim channels and nearly 140 stations that are “singletons,” or to move DTV equipment to locations now occupied by analog equipment in the case of many other stations, including KETC-DT), particularly since that time occurs in the middle of the winter, which in many parts of the country makes towers inaccessible or tower work difficult or dangerous.

In addition to the probable physical impossibility of many stations making DTV facilities changes in the immediate run-up to the transition deadline, there are many other factors that will affect stations as they play out the transition in their particular circumstances. Many stations have yet to apply for construction permits for their final DTV facilities, and can’t yet know when they can do that, how long the process will take, and what difficulties or unexpected issues they will face. Many of these stations may, for one reason or another, want or need to apply for facilities that do not precisely line up with the facilities allotted to them by the Final DTV Table. Many stations may have continuing financial or other constraints that limit the facilities they can deploy now on their permanent DTV

facilities, but have every intention to ultimately construct facilities reaching the largest possible audience.

For all these reasons, generally, SLPTV urges the FCC to be as flexible as the law allows, focusing on identifying and addressing ways to facilitate a smooth transition in February of 2009, and facilitating each station's own path and timing in achieving its final DTV facilities, so long as some minimally acceptable level of DTV service is being provided on permanent DTV channels as of the deadline.

II. The FCC should not require stations to construct facilities that precisely match the facilities specified in the Table of DTV Allotments.

In paragraph 67 of the *NPRM*, the FCC suggests that stations such as KETC-DT whose pre-transition DTV channel is the same as its permanent DTV channel, and who have constructed and licensed DTV facilities that do not match the facilities specified in the DTV Table of Allotments, will need to file an application to change their DTV facilities to match those DTV Table facilities. The FCC then expects that such final DTV facilities will be constructed by the transition deadline.

As noted above, SLPTV does not believe that the FCC should require every station to be operating with its "full" permanent facilities by the transition deadline, if by "full" the FCC means precisely those facilities specified in the DTV Table. In addition, SLPTV does not believe that, at this point, the FCC should not specify a requirement that stations apply for such facilities now, or a deadline for when they have to achieve them.

In some cases, it appears that discrepancies between actually authorized and constructed facilities and the DTV Table are relatively minor. In such cases, there is little to be gained by forcing stations to apply for new CPs and then tinker with their constructed DTV facilities, perhaps at great cost and disruption. In other cases, stations may in their circumstances have come to the conclusion that currently authorized and constructed facilities are sufficient for their coverage needs for the present time and/or small coverage improvements and large associated costs are not an effective use of their resources. This is true in the case of KETC-DT.

III. The FCC should in any event acknowledge particular concerns relating to KETC-DT, permitting it to continue to operate current DTV facilities through the transition deadline, until SLPTV is able to construct final DTV facilities.

As noted above, specifically with respect to KETC-DT, SLPTV urges the FCC to permit it to continue to operate its currently constructed and licensed DTV facilities through the end of transition and beyond, until such time as SLPTV is able ultimately to build out larger DTV facilities, notwithstanding that the current facilities are smaller than the DTV Table of Allotment facilities specified for KETC-DT, and that KETC-DT covers 97.2% of KETC (TV) analog coverage, instead of 100%.

When SLPTV certified its intention to replicate analog coverage, as noted above, it expected to be able to achieve that coverage after transition, and it had been more than two years since it had built-out and licensed its KETC-DT facility

on Channel *39 at 124.6 kW ERP. With that constructed DTV facility, KETC-DT already met the 80% pre-transition replication standard required of stations that receive a DTV channel designation on a channel that is not their current DTV channel – which is what SLPTV expected to receive upon its then planned, and later filed, election of its analog Channel *9. In fact, KETC-DT's currently licensed and operating digital facilities on Channel *39 replicate 97.2% of the station's analog population service. See the Engineering Statement accompanying the attached copy of SLPTV's "use it or lose it" waiver request.

It was only after the FCC identified a conflict with the Channel *9 election, and SLPTV was unable despite significant efforts to resolve it, that SLPTV in August of 2005 conceded that it would be required to stay on Channel *39 as its permanent DTV channel (which decision was later acknowledged by the Commission with the issuance of the tentative table in October, 2005). Due to the required change from the election of its analog channel to that of its existing DTV channel, SLPTV all of a sudden had to "construct full, authorized DTV facilities" which requires 100% analog replication.

SLPTV has explored the feasibility and practicality of achieving 100% replication and has determined that the cost of doing so would be prohibitive at this time – not only unaffordable to a noncommercial educational broadcaster such as SLPTV, but also clearly not worth the marginal gain to be achieved in terms of potential viewers. As explained in the noted Engineering Statement, KETC-DT currently reaches an OET-69 interference-free population of 2,671,405 persons

(97.2% replication of KETC (TV)'s "Table II" replication baseline population). In order to reach the 100% replication level of 2,748,9995 persons, SLPTV would need to quadruple the power for KETC-DT (to 498.4 kW ERP), which even then is only about half of the power level specified in the DTV Table. SLPTV's estimated costs to accomplish the quadrupling of power would amount to \$1,652,000.00 (including antenna, installation, tower, filter, combiner, power, DHD, and HVAC costs). These costs would be in addition to the \$1,082,096 that SLPTV has spent to date on its DTV conversion.

The expenses involved with reaching the 100% replication number under these circumstances make no sense for SLPTV at this time, and their expenditure would not be in the public interest. Considering the additional cost of more than \$1.6 million dollars (which would more than double SLPTV's already sizeable DTV expenditures to date), the potential benefit of reaching only 2.8% (77,590) more potential viewers does not outweigh the substantial additional costs that would be incurred.

Moreover, SLPTV cannot currently justify the extensive costs that would be required to provide an over-the-air service to such a limited number of additional persons given the minimal percentage of the population of its community of license that relies solely upon off-air reception. According to Nielsen Media Research, the 2006 Cable and/or Alternate Delivery System (ADS) penetration for the St. Louis DMA is at 78%. Thus not only would an extraordinary outlay of funds be necessary to achieve a minimal gain (of fewer than 80,000) in DTV population, but it is likely

that less than a quarter of those viewers actually rely upon over-the-air television reception.

Ultimately, SLPTV does intend to achieve full replication. Its intention is that, at an appropriate time following the transition deadline, it will remove its current analog Channel 9 antenna that is top-mounted on its tower, and purchase and install, in that top-mounted location, a new Channel 39 antenna along with a new transmitter, transmission line and other equipment capable of a substantial increase in power and coverage. SLPTV does not understand, however, why that has to happen by February 17, 2009, or certainly by any earlier date.

Based on the forgoing considerations, SLPTV has previously requested and the Commission has granted a temporary waiver of the replication deadline requirements for KETC-DT. However, in this proceeding, the FCC should adopt rules making it unnecessary for SLPTV to seek further special relief for KETC-DT by providing the flexibility SLPTV and others need to achieve their ultimate and final DTV facilities.

CONCLUSION

SLPTV urges the FCC to adopt flexible rules consistent with the comments above.

Respectfully submitted,

**ST. LOUIS REGIONAL EDUCATIONAL
AND PUBLIC TELEVISION
COMMISSION**

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